



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE
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Ann F. Jennings
Secretary of Natural and Historic Resources

David K. Paylor
Director
(804) 698-4000

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Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
STEPHEN ALEXANDER HOMES, L.L.C.
FOR
THE KAYWOOD LANE NEIGHBORHOOD DEVELOPMENT
UNPERMITTED**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Stephen Alexander Homes, L.L.C., regarding the Kaywood Lane Neighborhood Development, for the purpose of resolving certain violations of State Water Control Law and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Compensation" or "Compensatory Mitigation" means (i) the restoration (reestablishment or rehabilitation), establishment (creation), enhancement, or in certain circumstances preservation of aquatic resources or (ii) in certain circumstances an out-of-kind measure having a water quality, habitat, or other desirable benefit for the purposes of offsetting unavoidable adverse impacts to aquatic resources that remain after all appropriate and practicable avoidance and minimization has been achieved.

3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Impacts" means results caused by those activities specified in § 62.1-44.15:20A of the Code of Virginia.
6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
7. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
8. "Palustrine" means the palustrine system which includes all nontidal wetlands dominated by trees, shrubs, persistent emergent, emergent mosses or lichens, and all such wetlands that occur in tidal areas where salinity due to ocean-derived salts is below 0.5%.
9. "Permit" or "Virginia Water Protection Permit" means an individual or general permit issued under Va. Code § 62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code § 62.1-44.5 or otherwise serves as the Commonwealth's certification under § 401 of the federal Clean Water Act (33 United States Code ("USC") § 1344).
10. "Property", "Parcel" or "Site" means the Kaywood Lane Neighborhood Development located in Chesapeake, Virginia.
11. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 et seq.
12. "SAH" means Stephen Alexander Homes L.L.C., a limited liability company authorized to do business in Virginia. SAH is a "person" within the meaning of Va. Code § 62.1-44.3.
13. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 2.2 (Va. Code §§ 62.1-44.15:20 through 62.1-44.15:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.
14. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3 and 9 VAC 25-210-10.
15. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.

16. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
17. "Va. Code" means the Code of Virginia (1950), as amended.
18. "VAC" means the Virginia Administrative Code.
19. "VWP" means Virginia Water Protection Permit as defined in 9 VAC 25-210-10.
20. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. 9 VAC 25-210-10.

SECTION C: Findings of Fact and Conclusions of Law

1. Stephen Alexander Homes ("SAH") is developing land in Chesapeake, Virginia, and the area subject to this enforcement action has been designated as the Kaywood Lane Neighborhood Development, that once complete will be a housing development ("Property"). The Property contains nontidal palustrine forested wetlands, which are surface waters of the Commonwealth.
2. On September 13, 2019, the U.S. Army Corps of Engineers ("USACE") issued Preliminary Jurisdictional Determination ("JD") NAO-2019-00344 to SAH, to develop the residential property at the Property. The JD authorized impacts to 0.35 acres of palustrine forested wetlands. Joint Permit Application ("JPA") No. 21-1113 was submitted on May 24, 2021, and was under review by DEQ. A VWP permit was applied for and had not been issued prior to the wetland impacts. Prior to the impacts, DEQ notified SAH that the VWP application was incomplete and awaiting additional information from SAH.
3. On July 15, 2021, a representative for SAH visited the Property, and on July 29, 2021, SAH submitted a report to DEQ indicating that the wetland impacts at the Property had been taken despite a VWP permit not being issued.
4. On August 10, 2021, DEQ staff conducted an inspection of the Property to determine compliance with the State Water Control Law and the Regulations. During this inspection and subsequent records review DEQ staff observed the following:
 - a. Approximately 0.35 acres of palustrine forested wetlands were permanently impacted at the Property.
 - b. A review of DEQ records did not indicate that a VWP Permit or USACE authorization had been issued for the impacts at the Property.

5. 9 VAC 25-210-50(A) states, “Except in compliance with a VWP permit, unless the activity is otherwise exempted or excluded, no person shall dredge, fill, or discharge any pollutant into, or adjacent to surface waters; withdraw surface water; otherwise alter the physical, chemical, or biological properties of state waters regulated under this chapter and make them detrimental to the public health, to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; excavate in wetlands; or on or after October 1, 2001, conduct the following activities in a wetland: 1. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; 2. Filling or dumping; 3. Permanent flooding or impounding; or 4. New activities that cause significant alteration or degradation of existing wetland acreage or functions.”
6. Va. Code § 62.1-44.5(A) states, “Except in compliance with a certificate or permit issued by the Board or other entity authorized by the Board to issue a certificate or permit pursuant to this chapter, it shall be unlawful for any person to: 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; 2. Excavate in a wetland; 3. Otherwise alter the physical, chemical or biological properties of state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses; or 4. On and after October 1, 2001, conduct the following activities in a wetland: a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; b. Filling or dumping; c. Permanent flooding or impounding; or d. New activities that cause significant alteration or degradation of existing wetland acreage or functions...”
7. Va. Code § 62.1-44.15:20(A) states, “Except in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this article, it shall be unlawful to: 1. Excavate in a wetland; 2. On or after October 1, 2001, conduct the following in a wetland: a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; b. Filling or dumping; c. Permanent flooding or impounding; or d. New activities that cause significant alteration or degradation of existing wetland acreage or functions; or 3. Alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses unless authorized by a certificate issued by the Board.”
8. On August 11, 2021, DEQ issued Notice of Violation (“NOV”) No. 2108-001886 to SAH for the unpermitted impacts to 0.35 acres of palustrine forested wetlands, as described in C(4) - (7), above.
9. On August 24, 2021, DEQ staff met with representatives of SAH via a video meeting. In this meeting SAH stated that it would provide a written response to the NOV (“Response”). On August 31, 2021, SAH submitted the Response. In the Response SAH noted that ultimately, due to an error in communications with the SAH contractor, the

contractor didn't follow instructions and disturbed the wetlands prior to receiving the VWP permit.

10. Based on the results of the August 10, 2021, DEQ inspection and subsequent file review, and the August 31, 2021, Response, the Board concludes that SAH has violated 9 VAC 25-210-50(A), Va. Code § 62.1-44.5(A), and Va. Code § 62.1-44.15:20(A), as described in paragraphs C(4) – C(7), above.
11. In order for SAH to complete its return to compliance, DEQ staff and representatives of SAH have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders SAH, and SAH agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$15,600 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

SAH shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, SAH shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of SAH for good cause shown by SAH, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. 2108-001886, dated August 11, 2021. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but

not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility for matters not contemplated in this Order and arising from facts or occurrences after the execution date of this Order; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, SAH admits to the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact and conclusions of law in this Order.
4. SAH consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order
5. SAH declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by SAH to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. SAH shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. SAH shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. SAH shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and

- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and SAH. Nevertheless, SAH agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after SAH has completed all of the requirements of the Order;
 - b. SAH petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to SAH.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve SAH from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any documents to be submitted pursuant to this Order shall be submitted by SAH or an authorized representative of SAH.
13. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
14. By its signature below, SAH voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 20__.

Craig Nicol, Regional Director
Department of Environmental Quality

Stephen Alexander Homes voluntarily agrees to the issuance of this Order.

Date: 10/22/21 By: Stephen B. Quidd III Operating Manager
(Person) (Title)
Stephen Alexander Homes L.L.C.

Commonwealth of Virginia

City/County of Chesapeake

The foregoing document was signed and acknowledged before me this 22nd day of

October, 2021, by Stephen Quidd III who is Operating Mgr. of Stephen Alexander
Homes L.L.C., on behalf of the company.

Bonnie S. Lacerra
Notary Public

198329
Registration No.

My commission expires: 2-28-2025

Notary seal:



APPENDIX A

SCHEDULE OF COMPLIANCE

1. No later than 60 days after the effective date of this Order, SAH shall provide proof of purchase of 0.7 wetland mitigation bank credits from a DEQ-approved wetland mitigation bank that is authorized, approved, and released by DEQ to sell credits in the applicable Hydrologic Unit Code as compensation for the 0.35 acres of palustrine forested wetlands that were permanently impacted on the Property to achieve no-net-loss of existing wetland acreage and no-net-loss of function in all surface waters in accordance with 9 VAC 25-210-116.
2. Unless otherwise specified in this Order, Colonial Heritage shall submit all requirements of Appendix A of this Order to:

Enforcement
DEQ – Tidewater Regional Office
5636 Southern Blvd.
Virginia Beach, VA 23462